

FILED
U.S. DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA
AT SAVANNAH

2011 OCT 26 PM 3:51

CLERK *D. Moore*
SOUTHERN DISTRICT OF GEORGIAIN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISON

WILLIAM DEGENHART, M.D.)
)
PLAINTIFF,)
)
V.)
)
CONGAREE STATE BANK, THE DEGENHART)
LAW FIRM, PAUL DEGENHART AND)
MARY NELL DEGENHART,)
)
DEFENDANTS.)
)

Civil Action No. 4:11-CV-00013

**MOTION FOR SUMMARY JUDGMENT
AND MEMORANDUM OF LAW**

Defendant Mary Nell Degenhart (sometimes referred to as “the Defendant”) moves the Court for Summary Judgment on the Breach of Duty claim against her under Federal Rule of Civil Procedure 56(c).

MEMORANDUM OF LAW**I. Statement of Facts**

Plaintiff William Degenhart filed this action in the Superior Court of Chatham County. The case was moved to this Court.

Plaintiff bases this action on allegations that defendants Paul Degenhart, Mary Nell Degenhart and Degenhart Law Firm (collectively the “Degenhart Defendants”) improperly signed his name to a guaranty and a promissory note in favor of Congaree State Bank (the “Bank”). These loan documents related to loans the Bank made to MND

Properties, LLC of which Plaintiff incorrectly alleges Defendants Paul and Mary Nell Degenhart are “principals”.

Plaintiff has brought a Breach of Duty claim against Defendant alleging professional malpractice under O.C.G.A Section 9-11-9.1. Because all of the operative events—such as the closings – occurred in South Carolina, that state’s laws apply.¹ In South Carolina, in order to prevail in a cause of action for legal malpractice, the plaintiff must prove: (1) the existence of an attorney-client relationship; (2) a breach of duty by the attorney; (3) damage to the client; and (4) proximate cause of the client’s damages by the breach. Rydde v. Morris, 382 S.C. 643, 675 S.E.2d 431, 433 (2009). “In South Carolina, attorneys are required to render services with the degree of skill, care, knowledge, and judgment, and judgment usually possessed and exercised by members of the profession.” Holy Loch Distrib., Inc. v. Hitchcock, 340 S.C. 20, 26, 531 S.E.2d, 285 (2000), and” [t]he standard to be applied in determining legal malpractice issues is statewide, “Smith v. Haynsworth, Marion, McKay Geurard, 322 S.C. 433, 437-438, 472 S.E.2d 612, 614 (1996). Finally, generally, a plaintiff, a plaintiff in a legal malpractice action must establish this standard of care by expert testimony. Id. At 435, 472 W.E.2d at 613.

In this matter Plaintiff has testified on two occasions that no attorney- client relationship existed. (See excerpts from Exh. B, Plaintiff Deposition testimony at Pages 123 and 179 respectively). See also Affidavit of MaryNell Degenhart attached, Exh. A at

¹ A federal court sitting in diversity applies the substantive laws of the forum state, including the state’s choice of law rules. Klaxon Co. v. Stentor Elec. Mfg. Co., 313 U.S. 487, 61 S.Ct. 1020, 85 L.Ed. 1477 (1941); O’Neal v. Kennamer, 958 F.2d 1044 (11th Cir. 1992). In tort cases, Georgia follows the traditional lex loci delicti rule: a tort action is governed by the laws of the state in which the tort occurred. Federal Ins. Co. v. National Distrib. Co., 203 Ga. App 763 (1992). Because the alleged tort occurred in South Carolina, the laws of South Carolina will determine the substantive rights of the parties in this case. Davis v. City of August, 942 F. Supp 577, 579 (S.D. Ga 1996). The loan documents attached to the Complaint both provide that South Carolina law governs them.

Para. 4. where she states that no attorney client relationship existed. Moreover, Plaintiff, except for an Affidavit attached to his original complaint has not informed the Court of any Expert testimony. See also, Southeastern Housing Foundation v. Smith, 380 S.C. 621, 670 S.E.2d 680 (S.C.App. 2008) where the Court held that “the standard of care for legal malpractice is outside the ambit of common knowledge of laypersons and the failure to present this [expert testimony] evidence precludes ... the legal malpractice claim”. These factors, or either of them, are fatal to Plaintiff's case against this Defendant.

Federal Rule of Civil Procedure 56(c) provides for summary judgment “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. “Celotex Corp. v. Catrett, 477 U.S. 317, 322, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986). Facts are “material” if they could affect the outcome of the suit under the governing substantive law. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986).

The Court must view the facts in light most favorable to the non-moving party, Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587, 106 S.Ct. 1348, 89 L.Ed.2d 538 (1986), and must draw “all justifiable inferences in his favor.” United States v. Four Parcels of Real Prop., 941 F.2d 1428 as cited in Sprinkle v. City of Douglas, G.A., 621 F. Supp. 2d 1327 (S.D. Ga., 2008) . The facts of this case are clear. As stated by Plaintiff himself no attorney-client relationship existed.

CONCLUSION

Because the Plaintiff's case viewed in the light most favorable to him, is insufficient to establish all the requisite elements of his claim, this Defendant is entitled to Summary Judgment.



Mary Nell Degenhart
213 Park St.
Columbia, SC 29201
803-771-6050

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION

William Degenhart, M.D.,)
)
)
Plaintiff,)
)
v.) Case No. 4:11-CV-00013
)
)
Congaree State Bank, The Degenhart)
Law Firm, Paul Degenhart)
and MaryNell Degenhart,)
)
Defendants.)
)

AFFIDAVIT OF MARY NELL DEGENHART

Personally before the undersigned officer, who is duly authorized to administer oaths, appeared Mary Nell Degenhart who, upon being duly sworn, deposes and says as follows:

1. I am Mary Nell Degenhart, and I am a resident of the County of Richland and the State of South Carolina.
2. I am a South Carolina licensed attorney.
3. I was the sole member of Degenhart Law Firm, P.A.
4. Neither Mary Nell Degenhart nor Degenhart Law Firm, P.A. was engaged to perform, and in fact did not perform, legal services for the Plaintiff in connection with the matters subject of this litigation.

FURTHER AFFIANT SAYETH NOT.



Mary Nell Degenhart, Defendant, Pro Se
2131 Park Street

Columbia, SC 29201
803-771-6050

Sworn to and Subscribed before me
Donna Glenn Notary Public in and
for the State of South Carolina
this 27 day of October, 2011

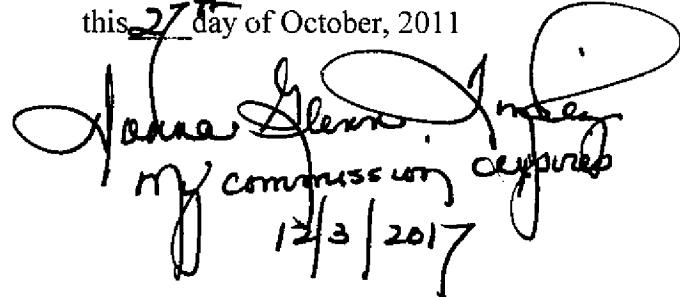

my commission expires
12/3/2017

EXHIBIT B

William J. Degenhart, M.D.

September 21, 2011

1

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION

WILLIAM DEGENHART, M.D.,)
Plaintiff,)
vs.) CASE FILE NO.:
CONGAREE STATE BANK, THE) 4:11-CV-00013-WTM-GRS
DEGENHART LAW FIRM, PAUL)
DEGENHART and MARY NELL)
DEGENHART,)
Defendants.)

DEPOSITION OF
WILLIAM J. DEGENHART, M.D.

September 21, 2011

2:14 p.m.

Savage, Turner, Kraeuter, Pinckney & Madison
304 East Bay Street
Savannah, Georgia

Lisa J. Schoch, Certified Court Reporter, B-1761



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William J. Degenhart, M.D.

September 21, 2011

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1 THE WITNESS: Paul represented me on
2 transactions before, yes. At one time he wrote
3 my will.

4 Q. (By Mr. Kennedy) All right. My original
5 question was: With respect to the loans made by
6 Congaree State Bank to MND Properties, L.L.C., did
7 you consider yourself a client of the law firm?

8 MR. SAVAGE: No.

9 THE WITNESS: Calls for a legal opinion
10 that I don't think I can give.

11 Q. (By Mr. Kennedy) All right. You're an
12 ophthalmologist, correct?

13 A. I am.

14 Q. Can a patient be your patient without
15 thinking they're your patient, without consenting to
16 your treatment, absent emergency circumstances?

17 MR. SAVAGE: Jake, we'll stipulate that he
18 was not a client -- he did not consider himself
19 to be a client of the Degenhart Law Firm for the
20 closings that he didn't know about, the MND
21 closings.

22 Q. (By Mr. Kennedy) Very good.

23 I do want to follow up on --

24 Dr. Degenhart, in a couple of depositions now or your
25 two depositions, and, of course, your lawyer,

Dr. William Degenhart
August 5, 2011

Page 1

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION

WILLIAM DEGENHART, M.D.,)
Plaintiff,) CIVIL ACTION NO.
vs.) 4:11-CV-041
ARTHUR STATE BANK, THE DEGENHART)
LAW FIRM, PAUL DEGENHART AND MARY)
NELL DEGENHART,)
Defendants.)

)

DEPOSITION OF
WILLIAM DEGENHART, M.D.

August 5, 2011

1:03 p.m.

2 East Bryan Street
Savannah, Georgia

Thomas J. Dorsey, RPR, CCR-2781

877-355-0329

Gilbert & Jones

dbgilbert@bellsouth.net

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Dr. William Degenhart
August 5, 2011

<p style="text-align: center;">Page 178</p> <p>1 the lawsuit. 2 Q. (By Mr. Kennedy) Okay. Well, what 3 documents, Dr. Degenhart, do you allege you did not 4 sign in relationship to the loans made from Arthur 5 State Bank to -- 6 MR. SAVAGE: No. We can't do this -- we 7 can't do this by phone. I mean, just come on 8 down. We did all this. We're happy to make him 9 available. Just come on down. 10 THE WITNESS: Probably 30 of them. 11 MR. SAVAGE: Yeah, I mean, it's hard. We 12 can't do this, Jake. 13 MR. KENNEDY: All right. Well, let's -- 14 I'll ask you a different question if we can't do 15 that one. 16 MR. SAVAGE: Well, I mean, we did it. 17 MR. KENNEDY: Well, that's fine, Brent. 18 MR. SAVAGE: Well, don't get testy. 19 MR. KENNEDY: I'm asking another question. 20 MR. SAVAGE: Don't get testy. 21 MR. KENNEDY: All right. I want to get 22 out of here too. I know you do. 23 MR. SAVAGE: I do, but, I mean -- go 24 ahead. 25 Q. (By Mr. Kennedy) Dr. Degenhart, with</p>	<p style="text-align: center;">Page 180</p> <p>1 Q. Do you know if the Degenhart Law Firm has 2 any assets? 3 A. I have no idea. 4 Q. Do you know if the Degenhart Law Firm has 5 any error and omission or malpractice coverage for 6 this lawsuit? 7 A. I don't believe that they do. 8 MR. KENNEDY: Dr. Degenhart, I have no 9 further questions for you. 10 THE WITNESS: Okay. 11 MR. SAVAGE: All right, sir. 12 MR. PAINTER: Do you have any, 13 Mr. Degenhart? 14 MR. P. DEGENHART: I do not. 15 MR. PAINTER: The deposition is over. 16 (Deposition concluded at 6:19 p.m.) 17 (Pursuant to Rule 30(e) of the Federal 18 Rules of Civil Procedure and/or O.C.G.A. 9-11-30(e), 19 signature of the witness has been reserved.) 20 21 22 23 24 25</p>
<p style="text-align: center;">Page 179</p> <p>1 regard to the loan transactions between Arthur State 2 Bank and MND Properties, do you think you were a 3 client of the law firm? 4 A. Do I think I was a client of the law firm? 5 Q. Yes, sir. 6 A. Representation on these notes? No. 7 Q. Were you a client of the Degenhart Law 8 Firm? 9 MR. SAVAGE: He's answered your question. 10 He's answered your question no. 11 MR. KENNEDY: That's not in here, no. 12 MR. SAVAGE: Well, that's because you're 13 doing it on the cheap end. You're too far away. 14 MR. KENNEDY: Okay. 15 Q. (By Mr. Kennedy) Dr. Degenhart, with 16 regard to the loan transactions that are the subject 17 of this lawsuit, did you consider yourself a client 18 of the Degenhart Law Firm? 19 A. With respect to these loans, I did not 20 consider myself a client of the Degenhart Law Firm. 21 Q. Dr. Degenhart, do you know if the 22 Degenhart Law Firm is an active entity? 23 A. Well, I think we just got some 24 interrogatories back saying that they were no longer 25 an active entity.</p>	<p style="text-align: center;">Page 181</p> <p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p> <p style="text-align: center;">CERTIFICATE</p> <p>STATE OF GEORGIA: COUNTY OF EFFINGHAM:</p> <p>I hereby certify that the foregoing transcript was taken down, as stated in the caption, and the questions and answers thereto were reduced to typewriting under my direction; that the foregoing pages 1 through 180 represent a true, complete, and correct transcript of the evidence given upon said hearing, and I further certify that I am not of kin or counsel to the parties in the case; am not in the regular employ of counsel for any of said parties; nor am I in anywise interested in the result of said case.</p> <p style="text-align: center;">This, the 8th day of August, 2011.</p> <p>THOMAS J. DORSEY, Certified Court Reporter, 2781</p>

46 (Pages 178 to 181)

877-355-0329

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served the within and foregoing Motion for Summary Judgment on all parties in this case in accordance with the directions from the Court Notice of Electronic Filing ("NEF") which was generated as a result of electronic filing.

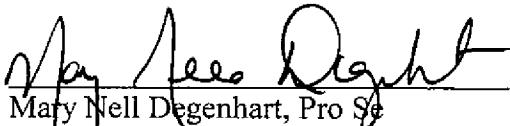
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This 28 day of October, 2011.


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